IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

CRP.No. 603 of 2007()

OPEP.128/2005 of DISTRICT COURT, ALAPPUZHA

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REVN. PETITIONER: 1ST RESPONDENT:

T.H. SALAM, S/O. HAMEED BEERAN,
AGED 29 YEARS, RESIDING AT THAKKIYAVU PARAMBU,
WARD NO.IV, PATTANAKKADU PANCHAYAT,
PATTANAKKADU VILLAGE.

BY ADV. SRI.T.JAYAKRISHNAN

RESPONDENTS: PETITIONER AND 2ND RESPONDENT:

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1. SEBASTIAN KALLUTHARA, S/O. MIKHAEL,
KALLUTHARA, PATTANAKKADU P.O., UZHUVA MURI OF
VAYALAR EAST VILLAGE.

2. KUTTAPPAN F. THANKIYIL, S/O. FRANCIS,
THANKIYIL HOUSE, ANDHAKARANAZHY P.O., WARD NO.18,
PATTANAKKADU PANCHAYAT, PATTANAKKADU VILLAGE.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P.NO. 603 OF 2007

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Dated this the 6th Day of July, 2007.

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O R D E R

This revision petition is preferred against the order of the learned District Judge, Alappuzha in O.P.(Election) 128/2005. The O.P. was filed by the defeated candidate for setting aside the election of the first respondent in the O.P. and to declare him as elected in the Panchayath election. The first respondent entered appearance and filed his counter statement. In the District Court a preliminary objection was raised that there has not been substantial compliance of the provisions of the Act and therefore the very petition is not maintainable and therefore it is to be thrown out in the first threshold itself. The first objection raised was the name of the respondent shown has only T.H.Salam, instead of Adv. T.H.Salam. Normally a person is known by the name and prefixing or suffixing abbreviations is not going to matter much. The person who had contested the election and won the election and whose address is given is one and the same and therefore the objection cannot be sustained and the District Judge has rightly rejected the same. So far as the second point is concerned, the learned counsel for the petitioner vehemently argued that there is non-

compliance of the requirements that is contemplated under the Panchayath Raj Act. The corrupt practice which according to the petitioner vitiates the election is embodied in para 9 and 10 of the petition. Those are the averments which have to be looked into by the court for deciding whether it is corrupt practice or not. It may be a defective pleading or pleading which cannot be substantiated. But the attempt of the petitioner is to bring to highlight the corrupt practice which according to the petitioner would vitiate the election. Court at this stage cannot look into the probability of proving the same at the threshold itself. Rule 62 of the Kerala Panchayath Raj Act enjoins that an affidavit has to be filed in form No. 28. Intention of legislature is to direct the person to file an affidavit to fix him with the averments in the petition and not to sway this side or that side thereafter. It is true that in the present affidavit filed, what has been stated is to the effect that what is stated in para 9 and 10 of the petition are true to the best of his knowledge and belief. The only defect I find is that he has not reproduced para 9 and 10. But he asserts and affirms para 9 and 10 as correct. As the affidavit is part and parcel of the election petition just because it is not of the reiterated in the affidavit, it would not vitiate the said affidavit so as to hold that there is non compliance of the Panchayath Raj Act. Learned counsel for the petitioner also invites

the attention to para 35 of the decision reported in ***R.P.Moidutty vs. P.T.Kunju Muhammad and another*** (2000(1) SCC 481). In that case there is a reference to the effect that object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. Now the facts stated in para 9 and 10 and whether those facts can be proved at the stage of trial is totally a different question. It may be acceptable or not acceptable. But at this stage it cannot be said that it cannot be established at all and therefore it has to be thrown out. It is very clear that allegation in para 9 and 10 is to be supported by acceptable and tangible evidence. I find that the learned District Judge has applied his mind and held that there is substantial compliance and therefore the order does not suffer from any infirmity and therefore the C.R.P. is dismissed.

M.N.KRISHNAN
JUDGE

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